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*Kevin L. Smith*

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**ARTURO RODRIGUEZ II**  
Deputy Attorney General  
Indianapolis, Indiana

**BAKER, Chief Judge**

Appellant-defendant Eberaia D. Fields appeals the sentence that the trial court imposed after this court vacated the habitual substance offender (HSO) enhancement in a prior appeal. Specifically, Fields argues that the trial court erred in resentencing him because it failed to suspend a portion of the sentence. Moreover, Fields appears to contend that because we did not specifically remand the cause for resentencing, the trial court lacked the authority to sua sponte modify the initial sentence. Thus, Fields contends that the two-year suspension of his sentence that was originally ordered should be reinstated. Concluding that the trial court properly resentenced Fields and correctly issued an amended sentencing order, we affirm.

### FACTS

The facts, as reported in Fields's prior appeal, are as follows:

In March 2005, Fields was charged with operating while intoxicated, a class A misdemeanor; operating while intoxicated with a prior conviction of operating while intoxicated, a class D felony; operating while suspended, a class A misdemeanor; resisting law enforcement, a Class A misdemeanor; false informing, a class B misdemeanor; provocation, a class C infraction; improper lane usage, an infraction; and being an habitual substance offender. Fields admitted to operating while suspended and was found guilty of the remaining charges. The trial court entered judgment of conviction on all counts except operating while intoxicated as a Class A misdemeanor and imposed an aggregate sentence of ten years.

Fields v. State, 888 N.E.2d 304, 307 (Ind. Ct. App. 2008). The record reflects that Fields was sentenced

to one year for operating while suspended, one year for resisting law enforcement, and 180 days for false informing. These sentences were to be served concurrently, but consecutive to a three-year sentence for operating while intoxicated with a prior conviction of operating while intoxicated.

Id. at 310. The trial court enhanced the operating while intoxicated with a prior conviction count by six years in light of the HSO finding. Fields was ordered to serve four years in the Department of Correction (DOC) and four years in the Tippecanoe County Community Corrections. The trial court suspended two years and placed Fields on supervised probation.

Thereafter, Fields appealed the operating while intoxicated conviction and the habitual substance offender finding. Fields also challenged the appropriateness of the sentence. We reversed the HSO finding because the State failed to file an amendment to that count in a timely fashion. However, we determined that there was sufficient evidence to sustain his convictions. We also concluded that the four-year aggregate sentence imposed on the remaining convictions was appropriate, particularly in light of the thirty-four convictions and eleven probation violations that Fields had accumulated since 1992. Fields, 888 N.E.2d at 311.

On August 13, 2008, the trial court resentenced Fields. Following a hearing, Fields was sentenced to three years on the class D felony, one year on each of the class A misdemeanors, and to six months on the class B misdemeanor. All of the misdemeanor sentences were ordered to run concurrently with one another and consecutively to the felony sentence. Thus, Fields received a four-year aggregate term of incarceration with one year suspended. The trial court then ordered Fields to serve two years at the DOC, one year on work release through Tippecanoe County Community Corrections, and to one year of supervised probation. Fields now appeals.

#### DISCUSSION AND DECISION

Fields argues that the trial court was without jurisdiction to modify the original sentencing order on remand after this court reversed the HSO finding. More specifically, Fields claims that the original sentence should stand, minus the enhancement on the HSO count. Put another way, Fields contends that the trial court improperly modified his sentence because it did not suspend two years of his sentence after the HSO finding was reversed.

In addressing Fields's contention that the trial court improperly modified his original sentence, we initially observe that sentencing decisions rest within the sound discretion of the trial court and are reviewed for abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g on other grounds, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

First, we note that there is no indication in our original opinion that we included the two-year suspended portion of Fields's sentence in the appropriateness review. Indeed, we observed that Fields had been "convicted of thirty-four offenses." Fields, 888 N.E.2d at 311. Moreover, we pointed out that twelve of those convictions were substance-related offenses, including three for operating a vehicle while intoxicated. Id. In light of these circumstances, we concluded that the sentence was appropriate. Id.

As we pointed out above, the trial court originally enhanced Fields's three-year sentence to nine years because of the HSO determination. Appellant's App. p. 24-25. When we ordered the enhancement vacated, Fields's sentence was effectively reduced from nine years to three years on the underlying felony, and the aggregate ten-year

sentence was reduced to four years. At the resentencing hearing, the trial court amended the sentencing order to reflect how Fields was to serve the four-year sentence. Specifically, as set forth above, the trial court ordered Fields to serve two years at the DOC, one year on work release at Tippecanoe County Community Corrections, and one year on supervised probation. Appellant's App. p. 40. In our view, the trial court merely clarified how Fields should serve his sentence, and there is no indication that it was issuing a "new" sentence. In fact, absent the trial court's clarification, it is likely that Fields would serve four years at the DOC.

Although Fields argues that the original enhancement on the HSO count was nonsuspendable<sup>1</sup> and, therefore, the originally-suspended two-year sentence must be applied to the sentence on the underlying offenses, that argument is immaterial in light of our reversal of that finding in the prior appeal. Moreover, at no time did Fields petition for rehearing, requesting that this court clarify how the four-year sentence should be served. Appellant's App. p. 2-3. Indeed, had Fields done so, this court could have issued an opinion that he serve: (1) two years executed and two years suspended; or (2) two years at the community corrections and two years suspended; or (3) one year executed, one year at the community corrections and two years suspended. Because Fields did not file a petition for rehearing to explain how his sentence should be served, there was no clarification about any confusion that Fields may have had.

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<sup>1</sup> Both the State and Fields point out that there is a split of authority in this court as to whether a trial court has the authority to suspend any portion of the sentence that is imposed on a habitual offender enhancement. Compare Reffett v. State, 844 N.E.2d 1072, 1074 (Ind. Ct. App. 2006) (holding that a trial court is precluded from suspending any portion of a habitual substance offender enhancement) with Bauer v. State, 875 N.E.2d 744, 749 (Ind. Ct. App. 2007) (holding that under certain circumstances, a trial court may suspend part of a habitual offender enhancement), trans. denied.

In sum, there is no indication that the trial court imposed a “new” sentence following the resolution of Fields’s initial appeal. As discussed above, we concluded in the prior appeal that a four-year executed sentence was appropriate. The amended order following the resentencing hearing simply alleviated any confusion as to how Fields should serve the sentence. As a result, Fields’s claim that he was improperly resentenced fails.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.